

1 Edward Bienz 206

2 Q I would like to just review with
3 you, paragraph four of your statement to the
4 Internal Affairs bureau -- Unit.

5 "We discussed doing something
6 else."

7 MR. CLARKE: You're reading from
8 the document?

9 MR. GRANDINETTE: Yes.

10 Q "We discussed are doing
11 something else. We all decided to call it a
12 night and head home about 1:00 a.m. Anthony
13 was unfamiliar with the area I told him to
14 follow me down to Route 110, and I would get
15 him to Jericho Turnpike. I was driving my
16 car, and Anthony was driving Sophie's car."

17 Was that an accurate statement,
18 what happened about 1 o'clock?

19 A Yes.

20 Q Now, keeping in mind,
21 Plaintiff's 58, and your acknowledgement
22 that you had a eight beers between 8:00 and
23 1:00 a.m., when you left The Artful Dodger,
24 were you intoxicated?

25 A No.

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2 Q When you left The Artful Dodger,
3 were you impaired?

4 A No.

5 Q Keeping in mind that you
6 observed Anthony drink at least seven vodkas
7 between 8:00 and 12:00, when Anthony left,
8 was he intoxicated?

9 A No.

10 MR. SCHROEDER: Objection.

11 Q Was Anthony DiLeonardo impaired?

12 A No.

13 Q How about Sophie Cornea?

14 A No.

15 Q And your wife?

16 A No.

17 Q Do you believe that your wife
18 was impaired, based upon her consumption of
19 alcohol?

20 A No.

21 Q How about Sophie Cornea?

22 A No.

23 Q Now, after leaving The Artful
24 Dodger, you indicated that you got in your
25 car, correct?

1 Edward Bienz 208

2 A Yes.

3 Q So, you made the conscious
4 decision to drive after drinking?

5 MR. CLARKE: Objection.

6 You can answer.

7 Q You made a decision to drive
8 your car after drinking, right?

9 A Yes.

10 Q Now, and you also said you
11 observed Anthony drive his car, correct?

12 A Yes.

13 Q After drinking the eight beers
14 between 8:00 and 1:00 a.m., was your ability
15 to operate your motor vehicle impaired to
16 any degree --

17 A No.

18 Q -- when you operated it between
19 The Artful Dodger and 422 Oakwood Road?

20 MR. CLARKE: Objection. Asked
21 and answered.

22 You can answer it again.

23 A No.

24 Q Was your physical coordination
25 impaired to any degree when you left The

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Artful Dodger?

MR. CLARKE: Objection.

You can answer.

A No.

Q As a result of your consuming those eight beers, was your cognitive process impaired to any degree?

A No.

Q Meaning by cognitive process, was your thought process impaired at all?

A No.

Q Your perception?

A No.

Q Your memory?

A No.

Q Your awareness?

A No.

Q Your judgment?

A No.

Q Your reaction time?

A No.

Q You're analytical abilities?

A No.

Q Your motor skills?

1 Edward Bienz 210

2 A No.

3 Q Do you know, having observed
4 Anthony DiLeonardo drink those seven vodkas
5 that night, and having worked with him for
6 six to eight months, as a result of
7 consuming those seven vodkas, was his
8 ability to operate his motor vehicle
9 impaired to any degree?

10 A No.

11 Q Was his physical coordination
12 impaired at all?

13 A No.

14 Q Was any of his cognitive process
15 impaired at all?

16 A No.

17 Q His ability to think?

18 A No.

19 Q Perceive events?

20 A No.

21 Q His memory?

22 A No.

23 Q His awareness?

24 A No.

25 Q Was any of his analytical

1 Edward Bienz 211

2 abilities impaired at all?

3 A No.

4 Q After drinking those eight
5 drinks, and getting behind the wheel of the
6 car at 1:00 a.m., and driving, did you
7 believe that you were violating any of the
8 Nassau County rules and regulations
9 regarding officer conduct?

10 A No.

11 Q Did you believe you were
12 violating any Vehicle & Traffic Law?

13 A No.

14 Q This wasn't a situation where
15 you believed you were violating rules and
16 consciously disregarded that, and did it
17 anyway?

18 A No.

19 Q Did you believe, when you got
20 behind the wheel of the car at 1 o'clock,
21 after leaving The Artful Dodger, that you
22 were exercising poor judgment by driving
23 your automobile?

24 MR. CLARKE: Objection.

25 (Mr. Mitchell just came in.)

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A No.

Q Did you believe that Anthony DiLeonardo was using poor judgment after drinking seven vodkas and getting behind the wheel of Sophie's car at 1:00 a.m.?

MR. CLARKE: Objection.

A No.

Q Now, according to the hospital records in this case, on February 27th, 2011, your body weight was recorded as 190 pounds; is that accurate?

A Yes.

Q Were you 6-foot 2?

A Yes.

Q You said that you had dinner and appetizers between 8:00 and 10:00?

A Yes.

Q With nothing to eat after that, correct?

A Yes.

Q So after you leave The Artful Dodger, I understand that you planned to bring Anthony DiLeonardo back to the Jericho Turnpike, correct?

1 Edward Bienz 213

2 A Yes.

3 Q Anthony DiLeonardo was from
4 Massapequa?

5 A Yes.

6 Q So he wasn't familiar with the
7 area. Your plan was to shoot down 110, take
8 him to Jericho, and send him on his way?

9 A Yes.

10 Q Then what was your plan from
11 there, to make a left and head towards King
12 Park, or turn around?

13 MR. CLARKE: Objection.

14 [REDACTED].

15 Q [REDACTED], I'm sorry.

16 A Head down Jericho.

17 Q To your home in [REDACTED]?

18 A Yes.

19 Q You agree that it's just a
20 straight, approximately four-mile drive,
21 straight down Route 110 north, to get to
22 Jericho Turnpike, correct?

23 A *No.

24 Q What happened on your way to
25 Jericho Turnpike?

1 Edward Bienz 214

2 MR. SCHROEDER: Objection to
3 form.

4 MR. GRANDINETTE: I'll withdraw
5 the question.

6 Q You leave The Artful Dodger with
7 your wife?

8 A Yes.

9 Q And Anthony leaves with Sophie?

10 A Yes.

11 Q You park next to each other,
12 from when you arrived?

13 A In the vicinity of each other.

14 Q You get in your car, he's going
15 to follow you?

16 A Yes.

17 Q What happens next?

18 A Proceed southbound on New York
19 Avenue.

20 When you start getting into
21 the -- south of the railroad track, the road
22 divides a few times. That's why either one
23 section, you got to bear right; one section,
24 you bear left, to take New York Avenue,
25 which becomes 110 at Jericho Turnpike.

1 Edward Bienz 215

2 During -- while driving the car,
3 instead of bearing left, I beared right,
4 which put me on a side street in Huntington.

5 Q Let me just read you paragraph
6 number four, okay --

7 A Yes.

8 Q -- starting from where we left
9 off.

10 "I [REDACTED] [REDACTED]
11 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
12 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
13 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
14 [REDACTED] [REDACTED] [REDACTED] [REDACTED]."

15 Is that the road that you're
16 talking about, that you inadvertently merged
17 onto --

18 MR. SCHROEDER: Objection.

19 A Yes.

20 Q "I [REDACTED] [REDACTED] [REDACTED]
21 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
22 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], "
23 correct?

24 A Yes.

25 Q [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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[REDACTED]

Do you remember making that statement to the Internal Affairs Unit?

A Yes.

Q After you made the turn onto West Hills Road, how long until you realized that you took the wrong turn?

A Took me a little bit of time.

Q Approximately how long until you realized you were with no longer on Route 110?

A Ten seconds.

Q And then ten seconds onto West Hills Road, did you stop and turn around?

1 Edward Bienz 217

2 A No.

3 Q So you proceeded down West Hills
4 Road, which turns you into West 19th Street?

5 A Yes.

6 Q And when you got to the end of
7 West 19th Street, according too this, you
8 made another wrong turn, heading northbound
9 on Oakwood Drive, back towards Huntington,
10 right?

11 A Yes.

12 Q So in that sense, you got lost,
13 and you eventually made a right-hand turn
14 onto Oakwood Drive, lending back to
15 Huntington --

16 MR. CLARKE: Objection.

17 Q And away from Jericho Turnpike?

18 A Yes.

19 Q It says that at some point, my
20 wife commented that I was going the wrong
21 way, right?

22 A Yes.

23 Q So when did your wife tell you
24 that you were driving in the wrong
25 direction?

1 Edward Bienz 218

2 A I don't remember.

3 We were engaged in conversation
4 about the evening, just small talk.

5 And at point, I made the wrong
6 turn. I realize it, then I took her -- she
7 realized it.

8 And then when I got to Oakwood,
9 I made a right, going north, instead of
10 which would make a left, which would have
11 took you southbound, to Jericho.

12 Q Would it be fair to say, this is
13 the first time in your life that you have
14 gotten lost going from Huntington Village to
15 Jericho Turnpike?

16 A No.

17 Q You had gotten lost driving
18 between Huntington Village and Jericho
19 Turnpike in the past?

20 A Sometimes you just miss the
21 split, and the road splits; I take the wrong
22 one. You can cut back over.

23 Q I appreciate that.

24 My question to you is, would it
25 be fair to say that this is the first time

1 Edward Bienz 219

2 you have gotten lost driving between
3 Huntington Village and Jericho Turnpike?

4 MR. CLARKE: Yes. He just told
5 you.

6 MR. SCHROEDER: Objection.

7 A No.

8 Q So how many times prior to
9 February 27, 2011, had you gotten lost
10 driving between Huntington Village and
11 Jericho Turnpike?

12 A I don't know.

13 Q Can you give me an estimate?
14 Did you get lost on one prior occasion, two
15 prior occasions, ten?

16 A Once o twice.

17 Q Can you tell me when, in
18 relation to February 27, those times were?

19 A Previous.

20 Q When previous?

21 A I don't know.

22 It's not really lost, per se.

23 It's just you make a wrong left, you are
24 like, ah, you have correct it. You know the
25 area.

1 Edward Bienz 220

2 It's not like lost, you don't
3 know. It's like you make a wrong turn.
4 You're in the middle of changing the radio
5 station, or you're thinking about something
6 you had to do. You have to readjust your
7 course.

8 Q On the prior occasions of which
9 you made a wrong turn driving from
10 Huntington Village to Jericho Turnpike, did
11 you have anything no drink?

12 A No.

13 Q Now, you indicated in here -- in
14 your statement, that you didn't recall being
15 in any kind of confrontation with another
16 car?

17 MR. CLARKE: Objection.

18 Misstates the statement.

19 Q Where it says, at no time was I
20 in a confrontation or road rage type
21 incident with any other car or driver,
22 correct --

23 A Yes.

24 Q -- between leaving the parking
25 lot and your arrival on Oakwood Drive that

1 Edward Bienz 221

2 night, do you recall being engaged with
3 another motor vehicle in any type of
4 incident at all?

5 A I was involved with no other
6 motor vehicle.

7 Q So, would be fair to say that
8 you never flashed your high beams at any
9 other motor vehicle, between those two
10 points?

11 A No.

12 Q That you never observed a white
13 Prius taxi between the time that you left
14 The Artful Dodger and the time that you
15 arrived at Oakwood Road and Tippin Drive?

16 A I didn't see a taxi.

17 Q Never saw a white taxi?

18 A No.

19 Q No car ever flashed their high
20 beams at you, after you turned onto West
21 Hills Road?

22 A No.

23 Q Did you ever tailgate another
24 motor vehicle after you got on West Hills
25 Road --

1 Edward Bienz 222

2 A No.

3 Q -- prior to stopping at Oakwood
4 Road and Tippin?

5 A No.

6 Q Did you ever pass a motor
7 vehicle on the left-hand side, while you
8 were on West Hills Road or 19th street?

9 A No.

10 Q When you were driving down West
11 Hills Road, which became West 19th Street,
12 what direction of travel was that road?

13 A West.

14 Q Okay. When you were traveling
15 west, did you ever cross into the eastbound
16 traffic lane?

17 A No.

18 Q Buy the way, West Hills Road is
19 a two-lane Road, one west, one east?

20 A Yes.

21 Q Did your driver's side ever --
22 your tires from your driver's side, ever
23 enter the eastbound traffic lane of West
24 Hills Road?

25 A No.

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2 Q When you got onto West 19th
3 Street, did you ever go into the eastbound
4 traffic lanes of West 19th Street?

5 A No.

6 Q Now, Anthony DiLeonardo was
7 following you?

8 A Yes.

9 Q Did you observe him following
10 you from Huntington Village to the point in
11 time that you stopped at Oakwood Drive Road
12 and Tippin Drive?

13 A Not the whole time.

14 Q Did you see him following you
15 onto West Hills Road?

16 A No.

17 Q When was the first time that you
18 realized Anthony DiLeonardo was behind you,
19 after turning onto West Hills Road, if at
20 all?

21 A I knew he was behind me, but I
22 wasn't watching. I'm driving my car, so I'm
23 not watching in the rear-view mirror, what
24 he is doing.

25 Q Is it your testimony, then, that

1 Edward Bienz 224

2 you didn't physically look to observe if he
3 was behind you, but you presumed that he was
4 behind you, after you turned onto West Hills
5 Road, and you were traveling westbound down
6 West 19th Street?

7 A Yes.

8 Q So you never observed his car
9 with your eyes, through your mirrors, or by
10 turning around, while you were driving
11 westbound on West Hills Road or West 19th
12 Street that night?

13 A No. Not that I recall, no.

14 Q How about when you made a
15 right-hand turn onto Oakwood Drive, nor did
16 you observe his vehicle behind your vehicle?

17 A Yes.

18 Q When was the first time, after
19 turning onto Oakwood Drive, heading
20 northbound, that you physically observed
21 Anthony DiLeonardo's car?

22 A When he pulled up behind me.

23 Q When was that? After you
24 stopped?

25 A It was after I stopped my car.

1 Edward Bienz 225

2 Q According to your statement, you
3 made the right-hand turn, I believe you
4 indicated your wife said something about you
5 going the wrong way. You pull over on, I
6 guess it's the eastbound side of Oakwood
7 Drive, facing northbound at the intersection
8 of Tippin Drive, right?

9 A Pulled over into the shoulder.

10 Q Then after you pulled over, how
11 long after that until Mr. DiLeonardo pulls
12 up behind you?

13 A Very short amount of time.

14 Q If you could give me an
15 estimate?

16 A Few seconds.

17 Q So, is it your testimony, then,
18 from making the right-hand turn onto West
19 Hills Road until the point in time that you
20 pulled over at the intersection of Oakwood
21 and Tippin, facing northbound, you didn't
22 physically observe DiLeonardo's car with
23 your own eyes or through your mirror,
24 following you?

25 A To the best of my memory, yes.

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Q So, the best of your memory, yes, meaning you didn't physically observe his car behind you, you just assumed he was behind you?

A Yes.

Q If you didn't look in your rear-view mirror, then you weren't able to observe whether or not Anthony DiLeonardo was engaged in any activity with any other motorist behind you?

A Yes.

Q You certainly -- would it be fair to say, as you sit here today, you didn't observe Anthony DiLeonardo involved in any kind of road rage incident with another vehicle?

A I didn't observe anything.

Q When you left the bar in Huntington, was Anthony DiLeonardo right behind you -- or the parking lot, excuse me?

MR. SCHROEDER: Objection to form.

A Yes.

Q To your knowledge, did any car

1 Edward Bienz 227

2 ever get in between you and Mr. DiLeonardo's
3 car while he was following you?

4 A No.

5 Q So, it was your understanding is
6 that when you made the right-hand turn onto
7 West Hills Road, he was right behind you?

8 A Yes.

9 Q As you sit here today, you're
10 saying to us, you don't believe -- or you
11 never observed any car get in between you
12 and Mr. DiLeonardo?

13 A I didn't make any observations.

14 Q After you entered West Hills
15 Road, you never passed a car on West Hills
16 Road or West 19th Street, correct?

17 A No.

18 MR. CLARKE: No, you didn't, or
19 no, that's not correct?

20 THE WITNESS: No, I didn't pass
21 any cars.

22 Q When you left the parking lot in
23 Huntington Village, to the time you pulled
24 over at Oakwood and Tippin, did you violate
25 any Vehicle & Traffic Laws?

1 Edward Bienz 228

2 A No.

3 Q Did you ever fail to signal?

4 A No.

5 Q Did you ever tailgate another
6 motorist?

7 A No.

8 Q Did you ever pass another
9 motorist in a non-passing zone?

10 A No.

11 Q Did you ever exceed the posted
12 speed limits?

13 A No.

14 Q What's the posted speed limit on
15 Route 110?

16 A I don't know.

17 Q How do you know you never
18 exceeded the speed limit?

19 A Because I was operating my car
20 in a reasonable and prudent manner.

21 Q Would you have conceded that you
22 can't say that you never exceeded the speed
23 limited, if you don't know what the speed
24 limit is?

25 MR. CLARKE: He's answered your

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question.

Q I'm asking you a question.

It would you concede that you can't affirmatively tell me you didn't exceed the speed limit, if you don't know what the speed limit is?

A I don't know what the speed limit is.

Q So would that mean you can't tell me if you exceeded the speed limit, if you don't know what it is?

A I can't tell you.

Q When you turned onto West Hills Road, sir, do you know if there's a change in the speed limit?

A No.

Q There's not a change in the speed limit?

A I don't know.

Q So you don't know what the speed limit is on West Hills Road?

A No.

Q Do you know if you exceeded the speed the limit on West Hills Road?

1 Edward Bienz 230

2 A No.

3 Q Do you believe you exceeded the
4 speed limit on West Hills Road?

5 A No.

6 Q Can you tell me how fast you
7 were have driving on West Hills Road?

8 A No.

9 Q Describe for me how you said you
10 merged from West Hills Road onto West 19th
11 Street. Describe the topography of that
12 merge?

13 MR. SCHROEDER: Objection.

14 A To the best of my recollection,
15 it's not only a merge, it's a street name
16 change, when it kind of goes from a little
17 bit of a minor commercial area to
18 residential.

19 Q So, then West Hills Road runs
20 west, and after a certain point in time, it
21 turns into West 19th Street?

22 A Yes.

23 Q So you didn't have to turn off
24 onto another road?

25 A No.

1 Edward Bienz 231

2 Q Is there an intersecting road at
3 which point the name changes from West Hills
4 to 19th Street?

5 A There might be.

6 Q Do you know the name of that
7 road?

8 A No.

9 Q Is there a device, traffic
10 control device, that controls that
11 intersection?

12 MR. CLARKE: Where the name
13 changes?

14 MR. GRANDINETTE: Yes.

15 A Stop sign.

16 Q Do you know if you ever drove
17 through that stop sign on the evening in
18 question?

19 MR. CLARKE: You mean, without
20 stopping?

21 MR. GRANDINETTE: Right.

22 A I would have stopped.

23 Q Do you know if there's a light
24 that controls that intersection?

25 A No.

1 Edward Bienz 232

2 Q Do you recall if you drove
3 through that light?

4 MR. CLARKE: He doesn't know if
5 there's a light there.

6 A It wasn't there.

7 Q You indicated to me that you did
8 not observe Anthony DiLeonardo driving after
9 you turned onto West Hills Road; you
10 couldn't say whether or not Anthony
11 DiLeonardo violated any Vehicle & Traffic
12 Law from the time that you turned onto West
13 Hills Road to the time that he pulled over
14 behind you, correct?

15 A I don't know what he did.

16 Q Likewise, you don't know if he
17 flashed his high beams at anybody or had any
18 kind of road rage incident?

19 A I don't know.

20 Q Now, there comes a point in time
21 where you pulled over on the side of the
22 road.

23 Describe West Hills Road for me
24 at the intersection of Tippin Drive?

25 A Two lanes of traffic;

1 Edward Bienz 233

2 northbound, southbound. Relatively wide.

3 Has a stop sign at the corner, and a

4 full-size shoulder on the east side.

5 Q What was on the westbound side
6 of the road?

7 Is there a landmark there? Do
8 you recall if there's a school there?

9 A Yeah. I don't know the name of
10 it.

11 Q But there's a big school
12 property there?

13 A Some sort of a government
14 property.

15 Q And then on the eastbound side?

16 A It's residential.

17 Q Was your vehicle parked in front
18 of a home, residential home?

19 A Yes.

20 Q Now, can you tell me what the
21 purpose was of you pulling over?

22 A I was waiting for -- I was
23 assuming that Anthony DiLeonardo was going
24 to pull up next to me.

25 Q Why did you stop, in the first

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operation?

A Because we had to turn around.

Q Did you elect to stop to speak to him and explain to him that you needed to turn around, rather than simply turning around?

A Yes.

Q Why did you do that?

A It's what I chose to do.

Q So was just something you did subconsciously, you were going to pull over, tell him you were heading in the wrong direction, turn around?

A Yes.

Q Then, he pulls up behind you, correct?

A Yes.

Q Now, there comes a point -- what happens next, after he pulled up behind you?

A DiLeonardo pulls up behind me --

Q Yes?

A -- and stops.

Then another vehicle pulls up next to his.

1 Edward Bienz 235

2 Q Before the other vehicle pulls
3 up next to his, when Anthony DiLeonardo
4 pulls up behind you, right?

5 A Yes.

6 Q You said you had a purpose,
7 correct?

8 A Yes.

9 Q Your purpose was what?

10 A To tell him to turn around.

11 Q So after he pulls up behind you,
12 what do you do next.

13 A Sat in my car for a few seconds.

14 Q Then what?

15 A The another car pulled up next
16 to his.

17 Q Between the time that you were
18 on West Hills Road, up to the time that you
19 stopped at Oakwood, you said you were having
20 some idle chitchat with your wife, right?

21 A Yes.

22 Q Do you recall what that was?

23 A No.

24 Q When she told you, you're going
25 the wrong way, and you pulled over, did you

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have any other further conversation with
her, at the corner of Oakwood and Tippin?

A No.

Q Did you ask her to, you know,
get out of the car and go tell Anthony,
we're going the wrong way? Did she ever say
anything to you?

A No.

Q Prior to leaving that night --
I'm assuming you had Anthony DiLeonardo's
cell phone number?

A Yes.

Q Did you ever pick up your cell
phone and call him and say, swing it around,
we're going the wrong way?

A No.

Q So, after he stops behind you,
does there come a point in time that your
wife exits the car?

A Yes.

Q Does your wife exit the door car
prior to this other motor vehicle arriving
at the scene?

A Around the same time.

1 Edward Bienz 237

2 Q So, why don't you tell me, in
3 your own words, what your recollection is of
4 what happens next?

5 MR. GRANDINETTE: I'll withdraw
6 the question.

7 A Well, I'm going to start a
8 little before that.

9 MR. GRANDINETTE: We marked
10 Plaintiff's Exhibit 1558 A as an
11 exhibit that you hand wrote on your
12 estimate of the times, okay, for the
13 record.

14 Q Now, Officer Bienz, I just want
15 to go over one more time, your conversations
16 with your wife.

17 From the time that you entered
18 the car in Huntington Village to the time
19 that you now pulled over and Anthony
20 DiLeonardo pulled up behind you, what, if
21 any, conversation did you have with your
22 wife?

23 A Just small talk.

24 Q Do you have any recollection of
25 what that small talk was about?

1 Edward Bienz 238

2 A Probably about the evening. If
3 she liked who she had met, the people.
4 Nothing --

5 Q Do you recall whether or not she
6 commented on either Anthony DiLeonardo or
7 Sophie Cornea?

8 A No.

9 Q So, would it be fair to say that
10 you don't have a recollection of the content
11 of what you discussed, other than it was
12 small talk?

13 A No. I don't recall.

14 Q No, meaning you don't recall the
15 conversation?

16 A I don't remember the specifics
17 of the conversation.

18 Q Do you recall your wife ever
19 mentioning anything about another car?

20 A No.

21 Q Did your wife ever mention
22 anything about a white Prius?

23 A No.

24 Q Did your wife ever mention
25 anything about bright lights being flashed

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or, you know, honking the horn at your car,
or the manner in which you were driving,
anything like that?

A No.

Q In your statement you indicated
that you had no recollection of any
confrontation or road rage incident.

MR. CLARKE: Doesn't say
confrontation. It's much clearer than
that, simpler than that.

Q You say, at no time was I --

MR. CLARKE: Before you inject
his recollection --

Q At no time, you said, to IAU,
did you have any indication of an encounter
with a car, correct?

A I said to IAU, said that I had
no confrontation or encounter with any other
vehicle.

Q Good.

Now, I just want to make sure
nothing your wife said suggested that she
observed Anthony DiLeonardo's car behind
you, engaged in any kind of encounter,

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right?

A Okay.

Can you rephrase the question.

Q Sure.

You just told us about your
conversation with your wife.

A Yes.

Q That although you don't recall,
it was small talk.

My question to you: Would it be
fair to say that your wife never brought up
observations that she made regarding a
confrontation another car and Anthony
DiLeonardo's car?

A She didn't say anything about
another vehicle.

Q Now, what I'd like to do now is
talk to you about what happened after you
pulled over and Anthony pulled over,
involving this white cab and the shooting,
okay?

A (No response)

Q We start out with the
proposition that neither your wife nor you,

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after you pulled over, had any reason to believe that there was any type of encounter with another vehicle?

A Yes.

(Whereupon, Plaintiff's 122 for identification was so marked.)

Q Now, I ask you to take a look at what has been marked as Plaintiff's 122. I ask you whether or not you recognize your car and Anthony DiLeonardo's car in that photograph?

A Yes.

Q Your car is which car?

A The blue Acura.

Q Anthony's car, or Sophie's, is the white Infiniti, parked behind it?

A Yes.

MR. CLARKE: Exhibit 122, right?

MR. GRANDINETTE: Yes.

Q Is that the location of your car where you pulled over on February 27th, 2011?

A Yes.

Q All right.

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So you pulled over now. You're going to tell Anthony you got to turn around.

You said you decided not to give him a call on your cell phone, right?

A The thought didn't come to mind.

Q What happens next, after you pull over and Anthony DiLeonardo pulls up behind you?

A Another vehicle pulls up next to Anthony's vehicle.

Q And when you say it pulls up next to Anthony's vehicle, can you tell me where it pulled up next to his vehicle?

A Adjacent to the driver's door.

Q Was it in the northbound travel lane?

A Yes.

Q Could you tell me, utilizing, let's say, the front bumper of this vehicle, where it pulled up adjacent to Anthony's car?

A Exactly, I don't really know, but they were next to each other, adjacent

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2 too each other.

3 Q So, do you know if the car that
4 pulled up, did he position his car so that
5 his passenger door was adjacent to Anthony's
6 driver's door, as if to communicate?

7 A I don't know if that was his --
8 why he pulled up like that.

9 Q Did you see that? Did you
10 observe that this car that pulled up was
11 adjacent to Anthony's car?

12 A Yes.

13 Q Did it appear to you that he had
14 positioned -- this driver positioned his
15 passenger side door next to Anthony's
16 driver's side door so that the two could
17 communicate?

18 A I don't know what his intentions
19 were.

20 Q Not what his intentions were; is
21 that what you observed?

22 MR. CLARKE: Your question
23 includes the concept of communication,
24 but it's asking about position.
25 You're asking about two things at

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once.

Q Position. Was his passenger door adjacent to Anthony's driver's door?

A Yes.

Q And can you describe this car that pulled up?

MR. SCHROEDER: At what point?

Q As soon as it pulled up?

A Are you speaking now, or are you speaking --

Q At the time the car pulls up, stops next to Anthony's car.

A Small white or silver-colored cab.

Q Okay.

How long after Anthony stopped behind you until this cab pulse up?

A Shortly after.

Q Give me an estimate?

A Few seconds.

Q Under ten seconds?

A Yes.

Q How do you make this observation that this car pulled up?

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A The mirrors in my car.

Q Were both you and your wife in your car at the time this car pulls up?

A Yes.

Q When you say mirrors, which mirrors?

A Side and rear.

Q Did you notice anything else about the other car at the time?

A No.

Q What is the next thing that happens?

A I notice that the driver of the vehicle that pulled up, and DiLeonardo -- and subsequently Anthony DiLeonardo, they both exit their vehicles, standing outside.

Q How long until you observe the first party get out of the car?

A A few seconds.

Q When you say a few seconds, again, ten seconds, five seconds?

A I'm really guessing -- under ten seconds.

Q This other motorist, this is a

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small compact car?

A Yes.

Q How long after the motorist exiting the small compact car is it until Mr. DiLeonardo exits his car?

A Right after.

Q So, within seconds?

A Yes.

Q Prior to either individual exiting their car, do you hear any words spoken?

A No.

Q Do you see anything that suggests there's some sort of exchange or encounter between the two?

A No.

Q Prior to either gentleman exiting the car, where was your wife?

A In the car.

Q So these other people get out of the car, right, Anthony and this other unknown person get out of the car prior to your wife exiting your car?

A Or about the same time.

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Q How did you observe these events?

A From my mirrors.

Q Which mirrors?

A Side and rear.

Q At this point in time, could you tell if the person who got out of the compact cash was male, female?

A No.

Q How far a distance is it between your car are and -- I'm going to refer to the white car was Anthony's car, but understanding that it was -- it's registered to his girlfriend?

A I don't know who it's registered to.

Q Anyway, the car Anthony was driving, how far behind your vehicle was it?

MR. SCHROEDER: Again, you're pointing to something.

MR. GRANDINETTE: Plaintiff's 122.

MR. CLARKE: You want him to estimate the distance between the

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2 front fender and the rear bumper? Is
3 that what you're asking him to do?

4 Q Approximately how far behind
5 your car was Mr. DiLeonardo? If you want to
6 use a guidepost --

7 MR. CLARKE: I'm asking you.

8 Q That's fine.

9 A I mean, these are the -- as long
10 as the cars were moved, the distance between
11 them.

12 Q I'm not asking the distance in
13 the picture; I'm asking your recollection.

14 Do you know how far his car was
15 behind yours?

16 A About a car length.

17 Q Does that appear to be an
18 accurate depiction of how far your cars were
19 parked back on February 27, 2015?

20 MR. CLARKE: What are you
21 referring to?

22 MR. GRANDINETTE: Plaintiff's
23 122, 2011.

24 A Yes.

25 Q Now, what happened? What

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2 happens next?

3 A From where?

4 Q The individual gets out of the
5 compact car. Seconds later, Anthony gets
6 out of his car.

7 A During that time, my wife had
8 exited our vehicle.

9 Q During what time?

10 A Right around the -- before they
11 had exited theirs.

12 Q Earlier you said that your wife
13 had gotten out, right --

14 A Yes.

15 Q -- about the time that -- after
16 they got out?

17 A Around about.

18 Q Now you didn't hear any
19 exchange, oral exchange, between these
20 individuals --

21 A No.

22 Q -- at this point in time?

23 A No.

24 I was assuming that Anthony was
25 going to wave the car past him, and he was

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going to pull up next to me.

When we were waiting, the car pulled up, and Anthony didn't pull up next to me.

Because there was delay in telling him to turn around, my wife was going to -- she jumped out to tell him to turn around.

Q What I'm going to do, I appreciate your explaining to me what happened.

I'm going to ask you to continue answering my questions. I'm going to go slow.

MR. CLARKE: He's trying to clarify, is what he is doing.

A I'm trying to clarify. It's kind of getting -- we're going back and forth. I'm getting confused. I got to keep it straight for myself.

Q We'll work on that.

MR. CLARKE: Just don't interrupt his answers.

MR. GRANDINETTE: There's not a

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question posed.

MR. CLARKE: He was answering a question.

MR. GRANDINETTE: No, he wasn't.

MR. CLARKE: Of course, he was.

Q At any rate, you see the occupant of the small car get out.

Could you tell if it was a male?

MR. SCHROEDER: Objection.

Asked and answered.

MR. CLARKE: That was asked and answered.

A No.

Q What happens next?

A Anthony exits his vehicle.

Q Do you see Anthony go anywhere after he exits his vehicle?

A No. They're both standing outside their doors.

Q So, if I understand your testimony, Anthony is standing outside of his driver's side door of the white Infiniti.

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Does he actually shut the door?

Does he leave the door open. What do you observe?

A I don't know.

Q You don't remember.

How about the cab, or the small compact car? Does he shut his door, get out, move? Where does he go?

A He's standing over the door and the hood, kind of.

Q Standing over the door.

Does that mean -- did he actually go around his door?

A No.

Q Was he in between his car and the driver's seat?

A From the best I could see.

Q And were you now watching those two individuals through your mirrors?

A Yes.

Q Did you believe that there was a problem afoot, at that time?

A Yes.

Q Knowing that there was a problem

1 Edward Bienz 253

2 afoot at that time, did you say to your
3 wife, honey, get back in the car?

4 A No. She already exited.

5 Q Did you attempt to stop her or
6 yell and say, honey, I want you to get back
7 in the car, or words to that effect?

8 A No.

9 Q Now, what happens next?

10 A My wife gets closer to those two
11 cars. I watch her back-pedal, or walk back
12 towards our car.

13 Q So when you say your wife
14 started walking closer to Anthony's car,
15 where was she walking after she exited the
16 car?

17 A Towards Sophie's car.

18 Q Was she on the sidewalk? Was
19 she on the roadway? What portion of the --
20 what was she walking on?

21 A She was on the passenger side of
22 the car. So that was roadway or grass. I
23 don't know what was there.

24 Q Did you physically watch your
25 wife walking back?

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A I had seen her start walking
backwards.

Q How did you see her walking
backwards?

A Top half of her body.

Q Then were you looking over to
your right, at the passenger side, watching
your wife walk?

A Over my shoulder.

Q Over your shoulder?

A Yes.

Through a window.

Q You have a specific recollection
of doing that?

A Yes.

Q But you can't tell me whether
she was on the grass, or whether she was --

A It was on the ground.

Q When you were watching this, did
your wife leave the door open?

A No.

Q She shut the door?

A I believe it was closed.

Q You're not 100 percent sure?

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A No.

Q You said your wife started to walk to Anthony's car, and then started to back-pedal, right?

A Yes.

Q How did she get from the passenger side to Anthony's car?

A From the passenger -- can you rephrase the question.

Q How far did your wife advance towards Anthony's car prior to her back-pedaling?

A She got within a few feet.

Q Of his car?

A Of the front of the Infiniti.

Q If you would, on Plaintiff's 122, can you see, in this photograph, approximately how close she got?

A No.

I really don't exactly remember exactly where she was when she started the coming back.

Q You said she got close to the front of the car.

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2 Does that mean she never reached
3 the front of the car?

4 A She was in the general vicinity.

5 Q Did she get past the rear bumper
6 of your car, but not to the front bumper of
7 his car?

8 A Somewhere in that area.

9 Q So would it be fair to say,
10 then, that the distance between the rear
11 bumper of your car and the front bumper of
12 Anthony's car, on the east side of the road,
13 is where you saw your wife walk to --

14 A Yes.

15 Q -- prior to beginning to
16 back-pedal?

17 A Yes.

18 Q If you could, just put an X
19 there, in that area.

20 MR. CLARKE: He can't really
21 say, from that photograph, exactly
22 where she was.

23 Q We just went through it.

24 Is that an accurate
25 representation of approximately where your

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wife was?

A In that vicinity.

Q If you would be kind enough to
put an X there, where you saw?

MR. CLARKE: He said it's in the
vicinity.

MR. GRANDINETTE: Chris, you
know what, rather than an X, put a
circle.

Q I get it; you can't be 100
percent sure.

Put a circle in the vicinity,
okay.

Counsel was kind enough to --
you said it was on east side of the road?

A Yes.

Q Could you put a circle
representing the north side of the road.

Let me see --

MR. CLARKE: It's not a good
reflection, the photograph. You can't
see where. He couldn't tell where.

MR. GRANDINETTE: If he can't,
he'll tell me.

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2 MR. CLARKE: He told you he
3 can't; you've insisted anyway.

4 MR. GRANDINETTE: I don't think
5 that's what he said.

6 Q But if you can, could you circle
7 that area.

8 MR. GRANDINETTE: Mike, could I
9 borrow a marker? You got a Magic
10 Marker?

11 MR. SCHROEDER: All I got is
12 this thing.

13 MR. GRANDINETTE: Do you have
14 one in the office?

15 Q Mr. Bienz, using the Sharpie, if
16 you could circle the general area where your
17 wife was, on the eastbound side, in between
18 the two cars.

19 MR. CLARKE: Objection to the
20 question.

21 A I don't particularly know where
22 she was standing. It's not reflected in
23 this picture, because it's not from the
24 other side. It's not like a satellite view.

25 Q I know it's not a satellite